



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's
Own Motion to Review the
Telecommunications Public Policy
Programs.

Rulemaking 06-05-028
(Filed May 25, 2006)

**THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS ON
JULY 13, 2007 SCOPING MEMO AND RULING AND COMMENTS ON
SEPTEMBER 17, 2007 RULING ON PUBLIC POLICY PAYPHONE PROGRAMS**

I. INTRODUCTION

The Division of Ratepayer Advocates ("DRA") files these Reply Comments in response to the comments of other parties on the Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling issued July 13, 2007 ("Scoping Memo") seeking comments about whether the Public Policy Payphone Program ("Quad-P") should be terminated and whether the Payphone Provider Enforcement Program ("PEP") should be absorbed into the Commission's general enforcement program.

DRA also files these Opening Comments pursuant to the Assigned Commissioner and Administrative Law Judge's Ruling issued September 18, 2007 ("Quad-P/CTF Proposal") seeking comment on the proposal to fold the Quad-P into the California Teleconnect Fund Program ("CTF") for administrative and funding purposes.

As DRA has explained in its Opening Comments, the Quad-P program should be mended rather than ended. DRA made specific recommendations for how the program should be reformed.¹ In these Comments DRA explains why the Quad-P should not be folded into the CTF, as the two programs are incompatible. DRA supports changing the

¹ The September 18 Ruling erroneously states that "In opening comments, several parties opposed terminating the program but offered no specific proposal to effectively achieve the goals of the program." DRA's Quad-P proposal is in the July 28, 2006 Opening Comments at 56-73.

funding mechanism for the Quad-P and the PEP to the same end user surcharge mechanism used to fund other public purpose programs. The PEP should be streamlined and data collection should continue for both the PEP and the Quad-P.

I. PUBLIC POLICY PAYPHONE AND PAYPHONE ENFORCEMENT PROGRAMS

A. Public health, safety and welfare demand that the Public Policy Payphone Program be fixed, not terminated.

Most parties agreed that the Public Policy Payphone Program is ineffective and is not meeting its goals in its current state. The commenting parties supported either of two approaches to cure the problems with this program: (i) review and repair or (ii) totally terminate. Latino Issues Forum (“LIF”) and The Utility Reform Network and National Consumer Law Center (“TURN/NCLC”) agreed with DRA that the program should be retained and reformed.² Those parties who recommended terminating the Quad-P, the California Payphone Association (“CPA”), Pacific Bell Telephone Company d/b/a AT&T California (“AT&T”), and the small Local Exchange Carriers (“Small LECs”) argued that the Quad-P imposed unnecessary burdens upon them, but did not describe the nature of the alleged burdens.³ DRA recognizes that payphone service providers (“PSPs”) face challenges, such as lack of reimbursement for the few public purpose payphones they maintain. But, the Commission’s primary focus should be on addressing the needs of the public, which the proponents of terminating the program have failed to address.

Though AT&T notes the public policy intention of the Quad-P to provide public payphones “in the interest of public health, safety and welfare at locations where there would otherwise not be a payphone”⁴ it does not provide any evidence supporting the Quad-P’s elimination. It merely makes a bald assertion that “changes in the telecommunications industry and the public’s demand for payphones have rendered the

² LIF Opening Comments at 3-4 (September 7, 2007); TURN/NCLC Opening Comments at 7 (September 7, 2007).

³ CPA Opening Comments (September 7, 2007); AT&T’s Opening Comments (September 7, 2007); Small LECs Opening Comments (September 7, 2007).

⁴ AT&T Opening Comments at 1 (September 7, 2007).

PPP⁵ unnecessary.”⁶ The other industry parties’ comments supporting elimination of the program were similarly devoid of evidence to support their recommendations.

To appropriately balance the needs of the public against any asserted burdens upon PSPs, DRA recommended that the Commission first conduct a workshop to provide a forum for the Commission and the parties to develop a fuller understanding of the Quad-P’s problems and collaboratively investigate solutions. The Commission should also consider changing the funding mechanism for the Quad-P to that of an end-user surcharge. The workshop would then provide the Commission with the information necessary to make an informed decision about what to do next.

B. The Payphone Enforcement Program should be streamlined to ensure consumer protection while decreasing the burden upon payphone service providers.

Those parties who commented on the Payphone Enforcement Program (“PEP”) share a common interest in streamlining the administration of the PEP. However, there is insufficient information available to determine what forms of data reporting and collection will be needed for an effective Commission enforcement program.

The comments from CPA and AT&T were useful in what DRA hopes will be the next step in fine-tuning the PEP⁷. While the regulatory burdens on PSPs and carriers should be minimized, the public safety and welfare needs must also be considered. To ensure this balance, the Commission must continue to have access to basic data that will allow the Commission to determine the locations of payphones, the overall health of the industry, and instances of fraud or abuse.

As DRA proposed in its Opening Comments, part of the data collection should be through the implementation of an “800” number for service complaints and a database for tracking different types of complaints, by payphone service provider and location.⁸ Most

⁵ *Id.*

⁶ *Id.*

⁷ CPA Opening Comments (September 7, 2007); AT&T’s Opening Comments (September 7, 2007).

⁸ DRA Opening Comments at 5-6 (September 7, 2007).

parties supported the idea of an “800” number and none opposed it.² Though the Commission will be responsible for collecting and organizing data obtained via the “800” number, the Commission must rely upon PSPs to provide information only available to them about their payphone locations and revenue trends. The Commission could use this data to pinpoint locations in need or no longer in need of Quad-P payphones. Payphone service providers collect this type of data in the normal course of conducting business and therefore would not be additionally burdened. For these reasons, PSPs should not be relieved of reporting requirements.

AT&T’s comments on reporting requirements include opposition to “any reporting requirements on payphone providers and/or local carriers”¹⁰ and elimination of the COPT Enforcement Report.¹¹ However, AT&T does not substantiate the elimination of reporting requirements with any evidence of benefits other than for itself. It fails to consider the Commission's goals and objectives for the program: consumer protection. For instance, AT&T recommended eliminating the COPT Enforcement Report but noted in the corresponding footnote that the data from that report is needed to facilitate random inspections.¹² Without the data to conduct random inspections, the Commission has little ability to ensure consumers are protected. Nonetheless, DRA recognizes that a better system for reporting of data to the Commission may exist and thus urges the Commission to conduct a workshop to investigate alternative methods for efficient and effective reporting.

CPA questions whether Commission oversight should be implemented through LECs that provide access lines for payphones, rather than direct regulation of the payphone service providers.¹³ CPA raised issues of local exchange carriers then having

² DRA Opening Comments at 57 (July 28, 2006); TURN/NCLC Opening Comments at 7 (September 7, 2007); CPA Opening Comments at 2-4 (September 7, 2007); AT&T Opening Comments at 2 (September 7, 2007).

¹⁰ AT&T Opening Comments, at 3 (September 7, 2007).

¹¹ AT&T Opening Comments at 2 (September 7, 2007)

¹² *Id.*

¹³ CPA Opening Comments at 4 (September 7, 2007).

to enforce tariff rules (of course, D.07-09-018 permits the “URF” ILECs to detariff). In our earlier comments in this proceeding, DRA proposed an expansion of Commission statutory authority over PSPs.¹⁴ DRA believes that an expansion of statutory authority over payphones may clear up ambiguities and subsequently simplify reporting by payphone service providers and LECs.

The workshop that DRA recommends contemplates discussing the data needed by the Commission to carry out the PEP and then to revise payphone service provider and/or LECs reporting requirements. DRA also recommends that the Commission consider a change of the PEP funding mechanism to that of an end-user surcharge. Other workshop topics should include:

- The “800” consumer complaint number and related data collection;
- Ways to reduce program overhead;
- Staffing needs;
- CPSD administration options;
- Timelines for implementing changes; and
- Role of the Payphone Service Providers Committee in keeping the program effective and efficient.

III. PROPOSAL TO FOLD THE PUBLIC POLICY PAYPHONE PROGRAM INTO THE CALIFORNIA TELECONNECT FUND

A. The Commission does not have statutory authority to fold the Public Policy Payphone Program into the California Teleconnect Fund.

The threshold issue to consider before answering the issues presented by the Commission’s Quad-P/CTF Proposal seeking to fold the Quad-P into the CTF is whether the Commission has statutory authority to combine the two programs. DRA does not believe that the Commission has such authority.

The CTF was created by California Public Utilities Code (“P.U. Code”) Section 280(a) which charged the Commission with the obligation to “develop, implement, and

¹⁴ DRA Opening Comments at 57 (July 28, 2006).

administer a program to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations, consistent with Chapter 278 of the Statutes of 1994.” On its face, the statute is clear as to what entities the CTF will fund and for what purpose. The legislative history of Section 280 indicates that the legislature contemplated “universal service” to mean a more advanced form of technology than that of payphones with the statement that “[e]xisting law requires the Public Utilities Commission to develop a plan to encourage the widespread availability and use of advanced communications infrastructure consistent with the state policy of bridging the digital divide.”¹⁵

Payphones may be located in schools, libraries, hospitals, health clinics, and community organizations and they provide a vital service to the public, but are by no means a form of advanced communication. As other parties have previously commented, “[t]echnological advances have reduced the number of payphones in California” and “have also significantly diminished customers’ reliance on payphones.”¹⁶

Furthermore, P.U. Code § 280(d) limits CTF funds to “be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.” Without the authority in subdivision (a), if the Commission used any CTF funds for the administration and oversight of the public purpose payphones, it would violate the statute. As a result, without any reasonable legal nexus between the Quad-P and the CTF the Commission must first seek legislative change before it can adopt its Quad-P/CTF Proposal.

B. The Public Policy Payphone Program and the California Teleconnect Fund are different programs with different purposes. They must remain separate.

Folding the Quad-P into the CTF as recommended by the Quad-P/CTF Proposal would be akin to sticking a square peg into a round hole. The differences in fundamental

¹⁵ Legislative Counsel’s Digest, Assembly Bill No. 855, Chapter 820 (2003).

¹⁶ Small LECs’ Opening Comments at 1 (September 7, 2007).

characteristics like the services funded, designation of eligible recipients, the application process, and the societal problems addressed by these two programs make combining the Quad-P into the CTF a poor fit.

The nature and purposes of the telecommunications services provided by the Quad-P and the CTF differ dramatically. The Quad-P should be funding installation, maintenance and connection costs for voice service of “uneconomic” payphones, whereas the CTF should principally fund a broadband monthly connection cost. The application criteria for both programs are also evaluated in different manners. Quad-P applications are oriented to select eligible sites for subsidized payphones, while CTF applications determine whether the applicant organization meets the fund’s eligibility criteria. Moreover, the issues of concern for the respective Advisory Committees have no overlaps due to different technologies and program constituencies. In sum, the Quad-P cannot fit into the CTF because these programs exist in separate technological, social, and administrative worlds.

Notwithstanding the marked differences between the programs, there are a few similarities between the two that DRA notes: one-time application processes, monthly payment schedules to payphone providers and carriers respectively, and possibly a common funding mechanism if the Commission adopts DRA’s recommendation for an all end-user surcharge. Though the primary purpose and mechanisms of the two programs vary too greatly to warrant combining them, the Commission should change the funding mechanism for the Quad-P and PEP to an all end-user surcharge and to keep program advisory responsibility with the Payphone Service Providers Committee. DRA recognizes that the Quad-P requires an intense review of the program in its current state, but oversight by an advisory committee focused on payphones makes more sense than throwing it into a program that is not designed to handle payphone issues.

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The following table contrasts key characteristics of the Quad-P and the CTF.

	Quad-P	CTF
Telco Service Subsidized	Voice	Primarily Broadband
Purpose	Infrastructure and monthly svc. (fluctuating support depending on payphone revenue)	Monthly service charges (regular, predictable charges)
Administration	One time application; monthly payments; installation costs	One time application; monthly payments
Applications	Based on public health, safety, welfare; evaluation of site geography	Based on applicant eligibility
Processing of Applications	Done by Payphone Service Provider Committee (assuming low volume of applications)	Done by Communications Division staff
Primary Issues for Advisory Committee	<ul style="list-style-type: none"> • Payphone placements • Administrative problems • Fulfilling public health, safety and welfare requirements 	<ul style="list-style-type: none"> • Digital divide • Telemedicine • Outreach • High-speed networks in CA and access options for CTF-eligible entities • Coordination w/ federal E-Rate
Funding Mechanism	Payphone line charge; possible transition to end-user surcharge	End-user surcharge

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C. Questions presented by the Quad-P/CTF Proposal to fold the Public Policy Payphone Program into the California Teleconnect Fund.

- 1. What changes to lists of services currently funded by the CTF program would be needed to add funding for the PPPP program? What monthly costs of the public policy payphone program should be funded from the CTF? Should it only reimburse the monthly cost of the access line? Should it only fund 50% of these costs, similar to the current CTF funding?**

These questions focus on applying existing funding criteria of the CTF to Quad-P payphones. DRA recommends not combining the programs. First, voice service and installation and maintenance costs for payphone equipment have not been part of CTF's eligible services. Adding such services would significantly complicate the CTF, both conceptually and administratively. Administratively, CTF is fairly simple to run because it funds predictable monthly charges for closely related services. One-time equipment installation charges for payphones are not related to CTF administrative tasks and would require new forms of equipment cost documentation for each new payphone.

Second, the questions about matching payphone funding to CTF's *access line only* financial support, and funding only *50% of these access line costs* show the shortcomings of trying to fit the Quad-P into CTF's structure. Many needed Quad-P payphones with their installation and maintenance costs, would not receive adequate funding to match the shortfall in revenues of these "uneconomic" payphones. Therefore, fifty percent (50%) funding of access line costs only, without considering payphone installation and maintenance costs, would put an unfair cost burden on the payphone service provider.

2. Should the criteria for public policy payphone designation be amended?

DRA supports all of the following criteria for the designation of Quad-P payphones: (a) it is for the public health, safety and welfare, (b) it does not generate sufficient revenue to cover costs of installation and maintenance, (c) the station agent agrees to no compensation, (d) there is unrestricted public access to it, (e) there is clear signage on it, and (f) it be in an emergency gathering place, or where residents cannot individually subscribe, or not within 50 yards of another Quad-P phone. As to the other criteria specifying conditions concerning property owners, including public agencies, on whose property Quad-P payphones may be located, DRA recommends that the Commission conduct a workshop to review these criteria and evaluate whether they help or impede the determination of where Quad-P phones are most needed.

3. Should eligibility to file an application be limited? Should only governmental and quasi-governmental entities be permitted to apply? Should community-based organizations (“CBOs”) be permitted to apply?

DRA has seen instances where governmental entities have applied for Quad-P payphones and local public agencies play a significant role in seeking these payphones. Nevertheless, these public agencies would not necessarily be CTF eligible schools, libraries or government healthcare institutions. Currently, applications from all types of entities for Quad-P payphones may give the Commission information on where those payphones are most needed. Limiting the eligibility of Quad-P applicants to those that are CTF eligible serves no purpose other than to hinder the already declining public policy payphone population at the detriment of the public. CBOs are currently, and should be, permitted to apply for the Quad-P.

a) If we permit CBOs to apply for public policy payphone designation should we require the CBOs to meet the current CTF criteria?

CBOs should be allowed to apply for placement of Quad-P phones. However, CBOs should not be required to meet the restrictive CTF eligibility criteria because only some CBOs would meet that criteria. This is another reason why the Quad-P should not be folded into the CTF.

4. Should we adapt the CTF application form to include the PPPP or should we continue to use separate application forms?

DRA again emphasizes that the two programs should not be combined. Further, a combined application would be a complicated mess for the applicant and lead to needless confusion. The CTF application process was recently simplified, with positive results.

5. What changes, if any, should be made to the CTF Program Administration and Funding mechanism to include the PPPP?

As DRA has explained, the CTF is not statutorily designed to include a program like the Quad-P. Therefore, DRA recommends that no changes be made to CTF to include the Quad-P.

6. What would be the cost impact to the CTF and customer surcharge if the PPPP were added to the CTF program?

The CTF has a cap of \$55 million per spending year. The addition of unauthorized programs and/or entities would prematurely bring the CTF closer to that cap, thereby potentially hindering the advancement of broadband access for qualifying entities. Eligible entities not receiving CTF funding would be unfairly prevented from receiving the benefits that the CTF statute expressly grants to them.

7. Please identify any other legal, policy, or practical issues with incorporating the PPP into the CTF.

DRA believes that this question should be the threshold question that the Commission considers before it attempts to answer the other questions posed by the Quad-P/CTF Proposal. Please refer to section III, headings A and B above for DRA's discussion.

IV. CONCLUSION

For the foregoing reasons, DRA respectfully requests that the Commission adopt its recommendations as set forth herein. The Commission should not eliminate the Quad-P, nor should it fold the Quad-P into the CTF. The Commission should change the funding mechanism for the Quad-P and the PEP to the same end user surcharge used to fund other public purpose programs.

Respectfully submitted,

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September 28, 2007

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I hereby certify that I have this day served a copy of “**THE DIVISION OF RATEPAYER ADVOCATES’ REPLY COMMENTS ON JULY 13, 2007 SCOPING MEMO AND RULING AND COMMENTS ON SEPTEMBER 17, 2007 RULING ON PUBLIC POLICY PAYPHONE PROGRAMS** ” in **R.06-05-028** by using the following service:

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Executed on the 28th day of September 2007, at San Francisco, California.

/s/ Nelly Sarmiento

Nelly Sarmiento

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